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1                   AT&T OF THE PACIFIC NORTHWEST, INC.; XO  
2           WASHINGTON, INC., by GREGORY J. KOPTA, Attorney at Law,  
3           Davis Wright Tremaine, 1501 Fourth Avenue, Suite 2600,  
                  Seattle, Washington 98101 (via teleconference bridge  
                  line.)

4                   COVAD COMMUNICATIONS CO., by BROOKS E.  
5           HARLOW, Attorney at Law, Miller Nash, 601 Union Street,  
                  Suite 4400, Seattle, Washington 98101 (via  
                  teleconference bridge line.)

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## P R O C E E D I N G S

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4 JUDGE BERG: We'll be on the record. This is  
5 a prehearing conference in the case captioned In the  
6 Matter of the Continued Costing and Pricing of  
7 Unbundled Network Elements and Transport and  
8 Termination, Docket No. UT-003013. Today's date is  
9 January 11, 2002. This prehearing conference is being  
10 convened at the commission's headquarters main hearing  
11 room in Olympia, Washington. My name is Larry Berg.  
12 I'm the administrative law judge who has been assigned  
13 to preside in this docket.

14 Today's prehearing conference takes place  
15 pursuant to notice duly served on parties on January 4,  
16 2002. The purpose of the prehearing conference is to  
17 discuss scheduling in what has been named the Part D  
18 and the Part E proceedings. Both of those proceedings  
19 are part of the same docket.

20 At this time, we will take appearances from  
21 parties. I would ask parties to please use the  
22 parties' representative list attached to the 26th  
23 Supplemental Order as a checklist and a guide for  
24 parties entering appearances in later making comments.  
25 I will indicate for the record that commission staff is

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1 represented by counsel in the hearing room. All other  
2 parties are appearing via teleconference on the  
3 commission's bridge line. Let's go ahead and proceed  
4 to appearances. To the extent parties have previously  
5 entered appearances, it is only necessary that you  
6 identify your name and the party or parties who you  
7 represent at today's proceeding. Ms. Anderl?

8 MS. ANDERL: Lisa Anderl and Adam Sherr  
9 representing Qwest Corporation.

10 MR. KOPTA: Gregory J. Kopta of the law firm  
11 Davis Wright Tremaine, LLP, on behalf of AT&T and XO.

12 MS. MCCLELLAN: Jennifer McClellan of the law  
13 firm Hunton and Williams representing Verizon  
14 Northwest.

15 MR. HARLOW: Brooks Harlow representing Covad  
16 Communications.

17 MS. SINGER NELSON: Michel Singer Nelson  
18 representing MCI/WorldCom.

19 MR. TRAUTMAN: Greg Trautman, assistant  
20 attorney general for commission staff.

21 MS. TENNYSON: Mary Tennyson, senior  
22 assistant attorney general for commission staff.

23 JUDGE BERG: Are there any other parties on  
24 the conference bridge line who would like to make an  
25 appearance at this time? Let the record reflect that

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1 there was no response.

2 I would like to begin the prehearing  
3 conference by making some introductory comments, and  
4 there will be the opportunity for parties to respond  
5 and present their own positions as we proceed. I  
6 believe at this point in time, parties are aware that  
7 the commission proposes to conduct the Part D and Part  
8 E hearings in this particular proceeding on an  
9 administrative-law-judge-only basis and proceed to an  
10 initial order subject to petitions for review.

11 I think everyone is aware that under  
12 Chairwoman Showalter's leadership, the commissioners  
13 have a commitment to being personally involved in all  
14 significant proceedings at the commission. This  
15 commitment is evident from their participation in  
16 rule-making workshops in addition to the extraordinary  
17 number of adjudications at which they preside. As you  
18 also know, their presence is not token. The  
19 commissioners come to hearings prepared and actively  
20 participate in the record.

21 So when I tell you that the commissioners  
22 have decided that they are unable to preside over  
23 Part D and Part E hearings, I hope you will understand  
24 the serious consideration that went into their making  
25 this reluctant decision. One of the major factors in

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1 their decision was how to conclude these hearings in a  
2 timely manner. Given the unprecedented number of major  
3 rate cases that are pending at the same time at the  
4 commission, the commissioners are faced with the choice  
5 of either unreasonably delaying proceedings or not  
6 presiding at these proceedings.

7 The commissioners believe that it is in the  
8 best interest of all concerned that the Part D and  
9 Part E hearings go forward on an  
10 administrative-law-judge-only basis, the production of  
11 an initial order after briefings by the parties, and  
12 then an opportunity for parties to make further  
13 briefings as part of their petitions for review and the  
14 possibility of oral arguments to the commissioners on  
15 those petitions.

16 In looking at the schedule, the commissioners  
17 believe that this proposal will result in final orders  
18 in both Part D and Part E as soon, if not sooner, than  
19 if the matter were to be scheduled for the  
20 commissioners to preside. Having said all of this, the  
21 commissioners are interested in hearing the positions  
22 of the parties with regard to both the matters being  
23 heard by an ALJ only as well as the posthearing process  
24 for an initial order and petitions for review.

25 Also factored into this decision is the

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1 anticipation that at some time this year, there will be  
2 an application for 271 authority filed by Qwest  
3 Communications, and there is what has been referred to  
4 as the new generic case to revisit unbundled network  
5 element loop and switch rates and to revisit the  
6 deaveraged loop rate structure. The commissioners at  
7 this point intend to preside at that proceeding as well  
8 as, of course, the 271 proceeding that will in all  
9 likelihood ensue. Scheduling complications have  
10 delayed the opening of a new docket and service of a  
11 prehearing conference notice in the new generic case.

12           The 26th Supplemental Order suggested that  
13 parties prepare to file direct testimony in March,  
14 2002. That may not be practical at this point in time.  
15 When a prehearing conference is conducted, the  
16 commission will insure that parties have adequate  
17 opportunity to prepare and prefile direct testimony.  
18 Although parties need not prepare to prefile direct  
19 testimony in March, per se, the commission encourages  
20 parties to continue their work in anticipation of the  
21 complex undertaking that will take place in this case.

22           Are there any questions or comments regarding  
23 the new generic case? All right.

24           MS. MCLELLAN: On behalf of Verizon -- I  
25 guess I was waiting for my turn.

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1           JUDGE BERG: Again, because everybody is on  
2 the conference bridge and nobody wants to step on  
3 anybody else's virtual toes, if I make an inquiry like  
4 that, let's just go down the list, and if parties do  
5 not have comments, they can just state so. So  
6 Ms. McClellan, we'll just proceed to you.

7           MS. MCLELLAN: Verizon just would like to let  
8 known for the record that we believe that any new  
9 generic cost and pricing docket to reexamine loop and  
10 switching rates, we don't believe a direct case should  
11 be filed in March. The main reason being that there is  
12 the Supreme Court appeal of the FCC's TELRIC rules  
13 pending, and with oral arguments having already taken  
14 place, we hope a ruling will issue from the Court  
15 fairly soon.

16           So we believe that the new generic cost case  
17 should wait until that opinion is released, and so it  
18 would be our preference not to have to file any direct  
19 testimony, and particularly cost studies, in March, to  
20 begin with.

21           JUDGE BERG: All right. Certainly that is a  
22 position that Verizon would have an opportunity to  
23 represent at a prehearing conference in that new docket  
24 when it occurs, but Verizon's position is duly noted in  
25 this case at this time. Other parties?

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1 MS. ANDERL: We would echo Verizon's comments  
2 and also note that in the evolution of cost studies,  
3 Qwest's are currently at a stage where they are  
4 changing in a way that we would not want to file in  
5 March but would want to have more time to work on the  
6 next iteration, which would put us into April or May  
7 from our perspective, and that would, of course, sync  
8 up well with a hoped-for decision from the Supreme  
9 Court.

10 JUDGE BERG: Anything from other parties?

11 MR. HARLOW: Similar I guess to the question  
12 that Qwest posed off the record about Parts D and E, we  
13 were curious whether the commission had made a  
14 preliminary determination on the potential  
15 participation of an advisor in the upcoming new cost  
16 docket.

17 JUDGE BERG: That decision has not been made.  
18 I believe the commission has received a proposal from  
19 Dr. Gable that would relate to his participation, but  
20 the commission will have to wait to decide that at the  
21 time the case is teed up. The commission also has  
22 serious budget concerns for the year. The commission  
23 will certainly have expert advisory staff to work with,  
24 but no decision has been made as to the advisory staff  
25 either retained or appointed to that case.

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1           MR. HARLOW: Again, on a similar vein, has  
2 any decision been made on commission participation  
3 versus an ALJ basis for the new docket?

4           JUDGE BERG: At this point in time, the  
5 commissioners have a strong preference to preside, and  
6 that is one of the reasons why a prehearing conference  
7 notice has not issued at this point in time. As the  
8 other scheduling issues are worked out, I expect that a  
9 prehearing conference notice will issue as soon as  
10 practicable, and at that point in time, a final  
11 decision will be made.

12          MR. HARLOW: Thank you, Your Honor.

13          JUDGE BERG: Other comments? Thank you,  
14 everyone. At this point, let's address the Part D  
15 proceeding. What I would like to do is take initial  
16 comments from the parties regarding the proposal that  
17 the case go forward. The hearings are conducted on an  
18 ALJ-only basis in that the posthearing process involve  
19 the production of an initial order and to be followed  
20 by petitions for review.

21          The commission is open to suggestions for  
22 other process if the parties think that some other  
23 process will give them a better opportunity to address  
24 the issues before the commissioners. We will conduct  
25 that particular part of the discussion on the record.

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1 When we actually move to scheduling, we will move off  
2 the record, so let me start at the top and see if  
3 Ms. Anderl, if you have any comments on behalf of your  
4 client, Qwest.

5 MS. ANDERL: I would not object to conducting  
6 the proceedings as an ALJ only with an initial order  
7 for administrative review. We would ask, however, that  
8 we do have oral arguments after the filing of petitions  
9 for administrative review in much the same way we've  
10 done in the 271 workshops. I think that helps to  
11 illustrate the parties' positions, focus on the  
12 important issues, and make the parties available for  
13 questions by the commissioners. I personally believe  
14 that that adds value to the process and would like to  
15 see that instituted, but beyond that, we are fine with  
16 an ALJ proceeding.

17 JUDGE BERG: I think the commissioners  
18 certainly benefited and understood the value of the  
19 oral arguments in the 271 proceeding. I'll go ahead  
20 and take the step of consulting with the commissioners  
21 to see if we can make that commitment to the parties at  
22 this time, and we will follow up in the prehearing  
23 conference order to follow. Mr. Kopta?

24 MR. KOPTA: At the risk of making an historic  
25 statement, we agree with Qwest. The procedures in the

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1 271 docket have worked out pretty well, and we have no  
2 objection to the proceedings in this case being held  
3 before an administrative law judge with the same kind  
4 of review process that's happened in the 271 docket.

5 JUDGE BERG: Ms. McClellan, comments with  
6 regards to Part D?

7 MS. MCLELLAN: For Part D, Verizon would not  
8 object to considering it before an ALJ only and having  
9 oral arguments later. We recognize our issues in  
10 Part D are very limited, and we probably won't get very  
11 much attention to begin with, so we will defer to  
12 everyone else.

13 JUDGE BERG: Mr. Harlow?

14 MR. HARLOW: Your Honor, I guess we agree  
15 with Qwest and AT&T and XO and apparently Verizon as  
16 well.

17 JUDGE BERG: Ms. Singer Nelson?

18 MS. SINGER NELSON: We don't have any  
19 objection to proceeding as the commission has proposed,  
20 and we think there is a lot of value to the oral  
21 argument as well, so we agree with everybody else.

22 JUDGE BERG: Ms. Tennyson?

23 MS. TENNYSON: Commission staff concurs with  
24 the previous comments.

25 JUDGE BERG: Thank you very much, everyone.

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1 That certainly is going to help move things along. I  
2 know the commission appreciates your willingness to  
3 work under that proposed process, and I hope that I can  
4 be as involved on the Bench as the commissioners have  
5 been to help develop the issues, and you certainly have  
6 my commitment to be as prepared as I can be.

7 Turning to Part D, the first thing I want to  
8 do before we go off the record to talk about scheduling  
9 is I wanted to just check off what I understand the  
10 current Part D issues to be. To begin with, we have  
11 the Qwest list of SGAT-related issues that was  
12 submitted to the commission on October 3rd, 2001, and  
13 as further clarified or addressed in its November 7th  
14 testimony, so we will call that No. 1.

15 No. 2 is the self-provisioning of points of  
16 interconnection, or POI's, and then on Verizon's side,  
17 I have what we will call four separate points. We will  
18 number these 3, 4, 5 and 6. The first is nonrecurring  
19 charges for multiplexing followed by nonrecurring  
20 charges for fiber optic patch cord related to OCN  
21 termination. Issue No. 5 is virtual collocation  
22 nonrecurring charges, and No. 6 are what I'll just  
23 refer to as the FCC's eight collocation rate elements.

24 Are there any clarifications or other issues  
25 parties believe are to be addressed in Part D, and

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1 let's just refer to the list, go from top to bottom.  
2 If you have no comments, please state so, starting with  
3 Ms. Anderl.  
4 MS. ANDERL: I may have just blanked out for  
5 a moment. Did you say that Issues 3, 4, 5 and 6 are  
6 Verizon issues?  
7 JUDGE BERG: Yes.  
8 MS. ANDERL: Then no, we don't have any  
9 comment.  
10 MR. KOPTA: We don't have any comment either.  
11 MS. MCLELLAN: Verizon doesn't have any  
12 comment.  
13 MR. HARLOW: Covad has no comment.  
14 MS. SINGER NELSON: WorldCom has no comment.  
15 MR. TRAUTMAN: Staff has no comment.  
16 JUDGE BERG: So we are all on the same page.  
17 At this point in time, we will go off the record to  
18 talk about scheduling.  
19 (Discussion off the record.)  
20 JUDGE BERG: Back on the record. Let the  
21 record reflect that a discussion among the parties and  
22 the Bench has taken place regarding both whether or not  
23 there are objections to the Part B proceeding on  
24 ALJ-only basis followed by an initial order and  
25 petitions for review. There are no objections to the

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1 case proceeding on an ALJ-only basis followed by an  
2 initial order.

3           Parties have stated that they believe the  
4 opportunity to present oral arguments on review has  
5 been very valuable in other cases, and they request the  
6 same opportunity to do so in the Part D proceeding. I  
7 will check with the commissioners, and if I can work  
8 that out at this point in the proceeding and give the  
9 parties a commitment, they will have that opportunity,  
10 I will do so. Nevertheless, there will always be an  
11 opportunity for the parties to request oral arguments  
12 after an initial order.

13           Also, the record should note that Ms. Singer  
14 Nelson, who did participate in all off-the-record  
15 discussions, has had to leave the conference. As a  
16 result of discussions with the parties, the following  
17 new dates will control the prefiling of testimony in  
18 the hearing in Part D. Covad's special response  
19 testimony and supplemental testimony will now be due on  
20 February 14th. Reply testimony will be due on March 7.  
21 Motions will be due on March 14, and answers to motions  
22 will be due on March 21.

23           There will be a prehearing conference for the  
24 exchange of exhibits and to argue motions on 3/28, and  
25 a hearing will be conducted beginning Monday, April the

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1 8th, concluding Friday, April the 12th. Additionally,  
2 after response testimony is filed, Qwest will have a  
3 cut-off date of Thursday, February 28th to request an  
4 extension of time to file reply testimony based on the  
5 volume of response testimony that is filed.

6 Counsel, any changes or corrections to the  
7 schedule I've just put on the record?

8 MR. HARLOW: Were you going to say anything  
9 further about the discussion about WorldCom's request  
10 to broaden the supplemental testimony?

11 JUDGE BERG: Yes, thank you, Mr. Harlow. In  
12 the off-record discussion, WorldCom indicated that it  
13 may seek to broaden the issues based upon its discovery  
14 that is under way. There was a discussion regarding  
15 the difference between broadening the issues through  
16 supplemental direct testimony and response testimony.  
17 The commission feels that if parties do find a need to  
18 broaden the issues beyond the scope of direct testimony  
19 that is filed, then they should notify the ALJ as soon  
20 as possible and discuss whether or not supplemental  
21 direct to be followed by other supplemental testimony  
22 is a more appropriate process to receive the evidence  
23 into the record, or I should say just to receive the  
24 evidence since a record will be made at the hearing  
25 when exhibits are admitted. Mr. Harlow, do you think

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1 that captures the discussion?

2 MR. HARLOW: I think so, Your Honor. My  
3 understanding is WorldCom has contemplated that the  
4 testimony would be in the nature of supplemental  
5 response, not supplemental direct.

6 JUDGE BERG: That's correct, and there have  
7 been occasions in the past where parties have filed  
8 either response or reply testimony and other parties  
9 have felt the need to file either additional response  
10 testimony or surrebuttal or some other form of  
11 response, and I expect that parties will state their  
12 position if they think that further testimony is  
13 necessary to complete the filing. Anything further?

14 MR. TRAUTMAN: This is Greg Trautman for  
15 commission staff. I thought you had indicated you were  
16 going to discuss briefing dates.

17 JUDGE BERG: Yes, and I didn't do it, and I  
18 was going to go back off the record to do that, so we  
19 will be off the record at this point.

20 (Discussion off the record.)

21 JUDGE BERG: After discussion with the  
22 parties, opening briefs in the Part D proceeding shall  
23 be due on Friday, May 10, and reply briefs or response  
24 briefs shall be due on May 31st. We will be off the  
25 record for a discussion regarding the Part E schedule.

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1 (Discussion off the record.)

2 JUDGE BERG: We will be back on the record.

3 There has been a lengthy discussion off the record  
4 regarding issues to be addressed in the Part E  
5 proceeding. Because of the potential impact on  
6 scheduling that the Part D order may have once it is  
7 entered, parties agree it makes sense to continue a  
8 prehearing conference to discuss Part E scheduling  
9 until a date after the Part B order is entered. I  
10 agree that's a good idea.

11 In the meantime, I will go ahead and reserve  
12 the hearing room for the dates July 29th through 2nd in  
13 case that has some benefit to any future proceedings in  
14 Part E. In light of that decision, are there any other  
15 issues that the parties wish to discuss on the record  
16 at this time? Hearing nothing, the prehearing  
17 conference is adjourned.

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19 (Prehearing conference concluded at 11:37 a.m.)

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